



October 18, 2001

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-4714

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153553.

The Travis County Attorney (the "county attorney") received a request for the supplemental brief that was submitted to this office in connection with a request for an open records decision, Open Records Letter Ruling No. 2001-3964 (2001). The Travis County District Attorney (the "district attorney") received a request for the same information, and also for "any supplemental brief filed or to be filed with the Attorney General relating to" the current request to the county attorney. The county attorney responds on behalf of both the county attorney and the district attorney.

Ordinarily, we consider a governmental body's communications to this office, stating why requested information should be withheld from public disclosure, to be available to the public. *See* Open Records Decision No. 459 at 2 (1987). But you claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the request to the district attorney was received on August 17, 2001. Item 2 of the request is for "an UNREDACTED copy of any supplemental brief filed *or to be filed* with the Attorney General relating to Jeffrey Edwards' open records request catalogued as File No. 43.x." (Emphasis added.) File No. 43.x is the request for public

information addressed to the county attorney. The supplemental brief that was submitted to this office in connection with the county attorney's request for an open records decision was dated August 22, 2001. Thus, on the date the request was received by the district attorney, the responsive information was not in existence. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Therefore, the Act does not require the county attorney to release any information to the requestor in response to Item 2 of the request addressed to the district attorney. Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is made confidential by another statute. You have marked portions of your letter that you claim are confidential under article 20.02 of the Code of Criminal Procedure. Article 20.02(a) provides that "[t]he proceedings of the grand jury shall be secret." You assert that the marked information "reveal[s] the testimony and evidence used by the Grand Jury in their deliberations[.]" Having considered your arguments and reviewed the information in question, we agree that the information you have marked is confidential under article 20.02(a) of the Code of Criminal Procedure. The county and district attorney must withhold that information under section 552.101 of the Government Code. *See also* Open Records Decision No. 513 at 4 (1988) (stating that information should be withheld if its release would reveal the grand jury's deliberations).

We have reviewed the information that you claim is excepted from disclosure under section 552.108 and have considered your arguments. But we conclude that neither the county attorney nor the district attorney has established how or why the release of any of the information in question would interfere with any pending criminal investigation or prosecution. Accordingly, none of the information at issue may be withheld from the requestor under section 552.108. *See also* Gov't Code § 552.108(c) (providing that section 552.108 does not protect basic information about an arrested person, an arrest, or a crime); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ refused n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

In summary, the marked information may be withheld from disclosure under section 552.101. The remainder of the information at issue must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 153553

Enc. Submitted documents

c: Mr. Jeffrey Mundy
Brobeck
4801 Plaza on the Lake
Austin, Texas 78746
(w/o enclosures)